IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1558 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRANBEN DEVRAJBHAI RAJANI W/O DINESHBHAI C. MANGROLIA - Applicant(s)
Versus
DINESHBHAI CHAKUBHAI MANGROLIA & 1 - Respondent(s)

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Appearance :
MR NIKHIL S KARIEL for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR TUSHAR L SHETH for Respondent(s) : 1,
PMR KT DAVE APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – wife has prayed for appropriate writ, order or direction to quash and set aside

the impugned judgement and order dtd.13/7/2007 passed by the learned Additional Sessions Judge and Fast Track Judge, Junagadh in Criminal Revision Application No.176 of 2006 in allowing the said Revision Application and reducing the amount of maintenance to be paid to the petitioner from Rs.4000 to Rs.2000 per month.

2. The petitioner herein – original applicant submitted an application under sec.125 of the Code of Criminal Procedure for getting maintenance from the respondent No.1 herein, being Criminal Misc.Application No.144 of 2005 in the court of learned 5th Additional Senior Civil Judge and Judicial Magistrate (FC), Junagadh praying for maintenance at the rate of Rs.15,000 per month alleging inter-alia that the respondent husband is serving in the school and is also doing business and is having 90 Bighas of agricultural land. The said application was opposed by the respondent No.1 – husband denying the income at Rs.15,000 per month as alleged and further submitted that the agricultural land belongs to joint family and that the petitioner – original applicant is doing private tuitions.

3. The learned 5th Additional Senior Civil Judge and Judicial Magistrate (FC), Junagadh by his judgement and order dtd.16/10/2006 partly allowed the said maintenance

application awarding the maintenance to the petitioner at the rate of Rs.4000 per month from the date of the application i.e. 5/3/2005.

4. Being aggrieved by and dissatisfied with the order passed by the learned Judicial Magistrate (FC), Junagadh awarding maintenance at the rate of Rs.4000 per month, the respondent husband preferred Criminal Revision Application No.176 of 2006 before the learned District and Sessions Judge, Junagadh and the learned Additional Sessions Judge and Fast Track Judge, Junagadh by his judgment and order dtd.13/7/2007 partly allowed the said revision application reducing the maintenance from Rs.4000 to Rs.2000 per month.

5. Being aggrieved by and dissatisfied with the judgement and order passed by the learned revisional court reducing the amount of maintenance from Rs.4000 to Rs.2000 per month, the petitioner wife has preferred the present petition under Article 227 of the Constitution of India.

6. Mr.Nikhil Kerial, learned advocate appearing on behalf of the petitioner – wife has vehemently submitted that the learned revisional court has materially erred in reducing the maintenance from Rs.4000 to Rs.2000 per month. He has submitted that the learned Revisional Court has also

erred in considering the salary / income of the respondent No.1 – husband at Rs.9162 per month only by deducting Rs.3000 towards loan and Rs.2500 towards G.P.F. He has also further submitted that the learned revisional court has also erred in not considering the agricultural income of the respondent husband. He has further submitted that so far as the alleged responsibility of the ailing mother and widow sister and her children are concerned, the respondent No.2 has two elder brothers who are well off and they can also take care. It is further submitted that even it is apparent from the evidence of the elder brother namely Jamanadas Chandubhai Mangrolia that he is living in his own house and in addition to his part in the joint family property, he is co-owner of 10 Bighas of land along with one brother. It is also further submitted that so far as the loan amount taken by the respondent No.1 is concerned, it is not clear that that what period, the respondent husband has taken the loan, for which he is paying installment of Rs.3000 per month. It is also submitted that though it is contended by the respondent that the said loan has been taken by the respondent for the treatment of his mother, but except his statement, no other material has been

produced on record. It is also submitted that what is the loan taken by him and when the installments would be over is also not coming on record. It is submitted that if the widow sister and her children are excluded and the amount of Rs.2500 deducted towards GPF is included in the income of the the petitioner, the total income of the respondent husband would be Rs.11662=00 and if the said amount is distributed equally amongst the three units, namely petitioner, respondent and the mother of the respondent, an amount of Rs.3887 would come to the share of each of them and if the said amount of Rs.3887 is rounded off, the same would come to be Rs.4000. Thus, the petitioner is entitled to get maintenance at the rate of Rs.4000 per month. Submitting accordingly, it is requested to allow the present petition and restore the judgement and order passed by the learned Judicial Magistrate (FC), Junagadh.

7. The petition is opposed by Mr.Tushar Sheth, learned advocate appearing for the respondent No.1 husband. It is submitted by him that in the facts and circumstances of the case and considering the liability of the respondent towards his ailing mother and widow sister and her children, the revisional court has rightly reduced the

amount of maintenance from Rs.4000 to Rs.2000 and the same is on appreciation of evidence and the same is not required to be interfered by this Court in exercise of powers under Article 227 of the Constitution of India. He has submitted that even the petitioner wife is having qualification of TCWG (Swing) and is also doing private tuitions and so far as the respondent husband is concerned, he to lookafter his widow sister and her children and his ailing mother who is suffering from brain tumour and for her treatment, the respondent has taken loan and is paying installment of Rs.3000 towards the loan. It is also submitted by him that if the loan is taken for luxury, in that case the installment towards the repayment of such loan can be considered as income but if the loan is taken for meeting with the medical expenses etc. the installment towards repayment of such loan, cannot be included in the income. In support of the said submission, he has relied upon decisions of this Court in the case of Amankumar Lalitbhai Parekh Vs. Pritiben Amankumar Parekh, reported in 1999(2) GLH 53 and Ramani Menon Vs. K.G. Omnakuttan and anr. reported in 2004 (1) GLR 200. Submitting accordingly it is requested to dismiss the present petition.

8. Mr.K.T. Dave, learned Additional Public Prosecutor has requested to pass appropriate order considering the evidence on record as well as the income of the respondent husband.

9. Heard the learned advocates appearing on behalf of the respective parties.

10. At the outset, it is required to be noted that the respondent No.1 husband is serving as a teacher in the school and as per the salary slip of February, 2007, his total salary is Rs.15,025. The salary slip shows that there is deduction of Rs.2500 towards GPF, Rs.3000 towards loan taken by the respondent from Cooperative Society, and Rs.283 towards LIC premium. Thus there is total deduction of Rs.5863 and the net income received by the respondent No.1 is Rs.9162. However, as held by the learned Single Judge of this Court in the case of Smt.Shilaben Yogeshkumar Shah Vs. Shah Yogeshkumar Vithaldas, reported in 1990(1) GLR 58, the deduction towards GPF, insurance etc. are required to be considered as income of the respondent husband, as the same is investment and the respondent would receive the said amount in future. It is also to be noted that in the case of Remani Menon (supra), the learned Single Judge of this

Court has observed that while considering the income of the husband, the deductions for the loans cannot be ignored, but at the same time, if the respondent is to take loan for making investment, may be for construction of house or may be for car or for any other purpose and if such amount is deducted, naturally such amount of deduction cannot be said as not forming part of the income of the husband. Considering the evidence, it appears that nothing is coming on record that for what purpose the loan is taken, what is the loan amount, for what period the loan is taken and when the installments of the loan would be over. It is the case on behalf of the respondent that he has to take care of his mother who is suffering from brain tumour and for her treatment, he has taken loan of Rs.1 Lac and he has to take care of his widow sister and her children. The maintenance application is of 2005 and assuming the loan of Rs.1 Lac is taken in the year 2002, then considering deduction of Rs.3000 per month, the annual deduction would be Rs.36,000 and the entire loan amount of Rs.1 Lac would be repaid within three years and after completion of the said loan, there would be no deduction of Rs.3000 towards the loan. Be that as it may. If the said deduction

of Rs.3000 per month towards the loan amount is ignored then also the deductions of amount of Rs.2500 deducted towards GPF and Rs.283 towards LIC premium, are required to be considered as income of the respondent and considering GPF and LIC premium as income, the total income of the respondent comes to Rs.12025. Further, the respondent is a teacher and he would get dearness allowances, increments etc. periodically and therefore, his income would be increased. Further, it has come on record of Jamanadas Chandubhai Mangrolia, brother of the respondent No.1 that the husband of the widow sister has died before 30 years and the widow sister is having son and daughter in law and her son is also doing labour work and earning. It has also come on record that the widow sister is having 10 Bighas of land jointly and her widow sister was also having agricultural land which she has sold. It has also come on record that the respondent husband has two brothers who can also take care of his mother. Thus, if the income of the respondent is considered at Rs.12025 per month and the petitioner, respondent and mother of the respondent are considered as three units, an amount of Rs.4000 would come to the share of each of them and accordingly, the

petitioner is entitled to maintenance of Rs.4000 per month. Thus, the learned revisional court has materially erred in reducing the amount of maintenance form Rs.4000 to Rs.2000, considering the income of the respondent No.1 at Rs.9162 per month. Under the circumstances, the said order passed by the revisional court requires interference at the hands of this Court in exercise of powers under Article 227 of the Constitution of India.

11. For the reasons stated above, the petition succeeds. The impugned order passed by the learned Additional Sessions Judge and Fast Track Court, Junagadh in Criminal Revision Application No.176 of 2007 dtd.13/7/2007 is hereby quashed and set aside the the judgement and order passed by the learned Judicial Magistrate (FC), Junagadh in Criminal Misc.Application No.144 of 2005 dtd.16/10/2006 is hereby restored. Rule is made absolute.

[M.R. SHAH,J.]

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